



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Blue Ridge Regional Office

www.deq.virginia.gov

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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION – ORDER BY CONSENT ISSUED TO BUCKINGHAM SLATE COMPANY, LLC

Registration Number 30665

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Buckingham Slate Company, LLC, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law, the applicable permit, and the regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Board” means the State Air Pollution Control Board, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. “BRRO” means the Blue Ridge Regional Office of DEQ, located in Lynchburg, Virginia.
3. “Buckingham Slate” means Buckingham Slate Company, LLC, a limited liability company (LLC) authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Buckingham Slate Company, LLC is a “person” within the meaning of Va. Code § 10.1-1300
4. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

6. "Facility" means the Buckingham Slate Company, LLC facility, located on Rt. 675 in Buckingham County, Virginia.
7. "FCE" means a full compliance evaluation by DEQ staff.
8. "Notice of Violation" or "NOV" means a type of Notice of Violation under Va. Code § 10.1-1309.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
10. "Permit" means a Stationary Source Permit to modify and operate a stone crushing plant, which was issued under the Virginia Air Pollution Control Law and the Regulations to Leseur-Richmond Slate Corporation on May 28, 1999.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 Chapters 10 through 80.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.
15. "VEE" means a Visible Emissions Evaluation, as determined by EPA Method 9 (see 40 CFR 60, Appendix A).

SECTION C: Findings of Fact and Conclusions of Law

1. Buckingham Slate owns and operates the Facility in Buckingham County, Virginia. The Facility is subject to the Permit which authorizes the operation of a stone crushing plant located off of Highway 15, north of Arvonias in Buckingham County. On November 21, 2008, Buckingham Slate filed a form to transfer ownership under the Permit from Leseur-Richmond Slate Corporation to Buckingham Slate.
2. On June 23-24, 2010, Department staff conducted an FCE of the Facility for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations:
 - a. *Observations:* The primary and secondary crushers wet suppression system did not have pressure gauges installed.

Legal Requirements: Condition 3 of the Permit states the following:

Fugitive Dust/Emission Control - Unless otherwise specified, dust emission controls shall include the following or equivalent as a minimum:

- a. **Dust from drills, shot piles, material handling, screens, crushers, load-outs and traffic areas shall be controlled by wet suppression or equivalent (as approved by the DEQ).**

The wet suppression spray systems shall be operated at optimum design, and pressure gauges shall be installed (with adequate access for inspection of the measuring device) to indicate system operating pressures.

- b. All materials being stockpiled shall be kept moist to control dust during storage and handling or covered at all times to minimize emissions.
 - c. Haul roads shall be controlled by wet suppression.
 - d. Reasonable precautions shall be taken to prevent deposition of dirt on public roads and subsequent dust emissions. Dirt spilled or tracked onto paved surfaces shall be promptly removed to prevent particulate matter from becoming airborne. (9VAC 5-50-260, 9 VAC 5-50-20 and 9 VAC 5-50-90)
- b. *Observations:* The facility was unable to provide the last twelve month rolling average throughput records for the Main Plant.

Legal Requirements: Condition 4 of the states the following:

Throughput - The annual throughput of crushed stone from the Main Plant shall not exceed 150,000 tons per year, calculated monthly as the sum of each consecutive twelve (12) month period. (9VAC 5-80-10 H)

- c. *Observations:* The facility was unable to provide the last twelve month rolling average throughput records for the Pugmill Plant.

Legal Requirements: Condition 5 of the Permit states the following:

Throughput - The annual throughput of crushed stone from the Pugmill Plant shall not exceed 75,000 tons per year, calculated monthly as the sum of each consecutive twelve (12) month period. (9VAC 5-80-10 H)

- d. *Observations:* Visible emissions were observed from the secondary crusher. An 18-minute VEE was conducted on the secondary crusher and the greatest 6-minute average was 34.58% opacity.

Legal Requirements: Condition 7 of the Permit states the following:

Visible Emission Limit - Visible emissions from the primary and secondary crushing shall not exceed fifteen (15) percent opacity as determined by EPA Method 9 (reference 40 CFR 60, Appendix A). (9 VAC 5-50-260 and 9 VAC 5-50-410)

Legal Requirements: Condition 12 of the Permit states the following:

Requirements by Reference - Except where this permit is more restrictive than the applicable requirement, the affected facilities shall be operated in compliance with the requirements of 40 CFR 60 Subpart OOO at a minimum. (9VAC 5-50-410)

- e. *Observations:* The facility was unable to provide the requested throughput records for the Main Plant and Pugmill Plant.

Legal Requirements: Condition 17 of the Permit states the following:

The permittee shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this permit. The content and format of such records shall be arranged with the Lynchburg Satellite Office. These records shall include, but are not limited to:

- a. The annual throughput of crushed stone through the Main Plant, in tons, calculated monthly as the sum of the previous consecutive twelve (12) months' production.
- b. The annual throughput of crushed stone through the Pugmill Plant, in tons, calculated monthly as the sum of the previous consecutive twelve (12) months' production.

These records shall be available for inspection by the DEQ and shall be current for the most recent five years. (9VAC 5-50-50)

- f. *Observations:* The facility was unable to provide maintenance records, inventory of spare parts, written operating procedures and training records.

Legal Requirements: Condition 20 of the Permit states the following:

Maintenance/Operating Procedures - The permittee shall take the following measures in order to minimize the duration and frequency of excess emissions, with respect to air pollution control equipment and process equipment which affect such emissions:

- a. Develop a maintenance schedule and maintain records of all scheduled and non-scheduled maintenance.
- b. Maintain an inventory of spare parts.
- c. Have available written operating procedures for equipment. These procedures shall be based on the manufacturer's recommendations, at a minimum.
- d. Train operators in the proper operation of all such equipment and familiarize the operators with the written operating procedures. The permittee shall maintain records of the training provided including the names of trainees, the date of training and the nature of the training.

Records of maintenance and training shall be maintained on site for a period of five years and shall be made available to DEQ personnel upon request. (9 VAC 5-50-20E and 9 VAC 5-170-160)

- 3. On July 16, 2010, based on the evaluation and follow-up information, the Department issued Notice of Violation AWCRO No. 7628 to Buckingham Slate for the violations described in paragraph C.2 above.

4. On August 19, 2010, Department staff met with representatives of Buckingham Slate to discuss the violations. Buckingham Slate submitted documentation that verifies that the violations described in paragraph C(2), above, have been corrected.
5. Based on the results of the June 23-24, 2010 evaluation, the August 19, 2010 meeting, and the documentation submitted on August 19, 2010, the Board concludes that Buckingham Slate has violated Permit conditions 3, 4, 5, 7, 17, and 20 as described in paragraph C.2 above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it pursuant to Va. Code §§ 10.1-1309 and -1316, the Board orders Buckingham Slate, and Buckingham Slate agrees to:

1. Pay a civil charge of \$7,500 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
December 1, 2011	\$3,750
March 1, 2012	\$3,750

2. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Buckingham Slate. Within 15 days of receipt of such letter, Buckingham Slate shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.
3. All payments shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Buckingham Slate shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Buckingham Slate, for good cause shown by Buckingham Slate, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Buckingham Slate admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Buckingham Slate consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Buckingham Slate declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Buckingham Slate to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Buckingham Slate shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Buckingham Slate shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Buckingham Slate shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the Buckingham Slate intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

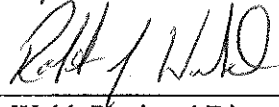
- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Buckingham Slate. Nevertheless, Buckingham Slate agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Buckingham Slate has completed all of the requirements of the Order.
 - b. Buckingham Slate petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Buckingham Slate.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Buckingham Slate from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Buckingham Slate and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Buckingham Slate certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Buckingham Slate to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Buckingham Slate.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
- 15. By its signature below, Buckingham Slate Company, LLC voluntarily agrees to the issuance of this Order.

Consent Order – AWCRO #
Buckingham Slate Company, LLC - 30665

And it is so ORDERED this 16th day of September, 2011.

A handwritten signature in black ink, appearing to read "Robert J. Weld", written over a horizontal line.

Robert J. Weld, Regional Director
Department of Environmental Quality

Buckingham Slate Company, LLC voluntarily agrees to the issuance of this Order.

Date: 9/13/11 By: [Signature], V. PRESIDENT
(Person) (Title)
Buckingham Slate Company, LLC

Commonwealth of Virginia,
City/County of Buckingham

The foregoing document was signed and acknowledged before me this 13th day of

September, 2011, by Wallace B. Jones, who is

Vice President of Buckingham Slate Company, LLC on behalf of the Company.
(title)

[Signature]
Notary Public

187275
Registration No.

My commission expires: 3-31-2015

Notary Seal:

